

(4) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. “Borrower” for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. “Controlled substance” is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(5) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(6) The borrower can document the ability to repay the total amount due under the subordination and pay all other debt payments scheduled for the subject operating cycle; and

(7) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination.

(c) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations on chattel security to make a guaranteed loan will be approved in accordance with §1980.108 of subpart B of part 1980 of this chapter.

(d) *Forms.* Subordinations will be requested and executed on Agency forms available in any Agency office or on any other form approved by the Agency.

(e) *Rescheduling of existing Agency debts.* The Agency may consent to rescheduling of an existing Agency debt when a subordination is granted to the debt of another lender. The rescheduling will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the condi-

tions of subpart S of part 1951 of this chapter are met.

(f) *Appraisal.* The Agency will prepare a chattel appraisal report when the existing appraisal report is more than 2 years old or is inadequate to make the determination in this section. The Agency may use an appraisal submitted by the borrower if it is substantially similar to Form RD 440–21, “Appraisal of Chattel Property,” and prepared by a licensed appraiser.

[63 FR 20297, Apr. 24, 1998]

§§ 1962.31–1962.33 [Reserved]

**§ 1962.34 Transfer of chattel security and EO property and assumption of debts.**

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter as soon as the borrower contacts the County Supervisor inquiring about a transfer. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of “controlled substance”) prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop

year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

(a) *Transfer to eligibles.* Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA or its successor agency under Public Law 103-354 debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA or its successor agency under Public Law 103-354 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be re-scheduled using Form FmHA or its successor agency under Public Law 103-354 1965-13, "Assumption Agreement (Farmer Programs Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and/or an applicant eligible to receive limited resource rates and terms, the interest

rate charged by FmHA or its successor agency under Public Law 103-354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type assistance involved.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners or joint operators withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers, partners, or joint operators may be made as an eligible transferee.

(4) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in the Agency's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the Agency debt, or an amount equal to the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) Agency debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1965-13. The Farm Credit Programs NP interest rate for chattel property set forth in a National Office issuance, in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal

balance. The transferred property, including EO property, will be subject to any existing Agency lien. In the absence of an existing Agency lien, new lien instruments will be executed.

(4) The transferee can repay the Agency in accordance with the assumption agreement and can legally enter into the contract.

(5) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any cosigner may be released from personal liability to Agency when all the chattel security or EO property is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. The appropriate official is authorized to approve releases from liability in accordance with §1962.34(h) of this subpart. When there will be no release from liability, the transferor and co-signer of a Farm Credit Programs loan must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any Agency office).

(e) *Agency actions*—(1) *Transfer to eligible applicant.* The Agency will determine the transferee's eligibility for the type of loan to be assumed.

(2) *Release from liability.* If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay

all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

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§§ 1962.35–1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) *Voluntary liquidation*—(1) *General.* When a borrower contacts the agency and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, the agency will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under §1962.41 of this subpart,

(ii) Transferring the security under §1962.34 of this subpart,

(iii) Conveying the security to the agency under Subpart A of Part 1955 of this chapter, or